

Judge Bryan

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 CHRISTOPHER LEWIS,)
)
 Defendant.)

NO. CR10-5435RJB

**GOVERNMENT'S
SENTENCING MEMORANDUM**

The United States of America, by and through Jenny A. Durkan, United States Attorney for the Western District of Washington, and Ye-Ting Woo and Matthew Thomas, Assistant United States Attorneys for said District, files this Sentencing Memorandum as to Defendant Christopher Lewis. Following a settlement conference before Judge Jones, the parties entered into a binding plea agreement pursuant to Rule 11(c)(1)(C), which allows the Court to either accept or reject the binding sentencing agreement of nine years. *See* Plea Agreement at ¶10. If this Court rejects the sentencing agreement, the Court is required to provide the parties with an opportunity to withdraw from the plea agreement. In the event this Court accepts the binding sentencing recommendation, the government offers the following discussion about the offense conduct, application of sentencing guidelines, and analysis of factors under Title 18,

United States Code, Section 3553(a) to assist the Court in understanding the nature and background of this case.

I. OFFENSE CONDUCT

Defendant Christopher Lewis entered a plea of guilty to a Superseding Information charging Human Trafficking, in violation of Title 18, United States Code, Section 1590. This offense involved the defendant financially benefitting from the exploitation of a 17-year old woman (referenced as A.L.) for over three months. The stipulated facts in the Plea Agreement state:

a. In February 2010, AL (female) met the Defendant. AL was working as a prostitute when she initially met the Defendant. The Defendant supported himself through the prostitution funds that AL earned. During this time period, the Defendant and AL were also involved in a boyfriend-girlfriend relationship.

b. The Defendant assisted AL's prostitution activities by transporting AL to her prostitution "dates" and renting motel rooms.

c. The Defendant participated in this scheme and plan with the intent to cause AL to believe that AL would suffer serious harm if she did not perform such labor, i.e. prostitution.

CR 65; Plea Agreement at ¶9.

The government also concurs with the Probation Office's detailed summary of the Offense Conduct in Paragraphs 12-17 of the Pre-Sentence Report (PSR). The government notes that the Confidential Source referenced in the PSR at paragraph 16 is the co-defendant's victim, AHF, and that the Confidential Source referenced in PSR at paragraph 17 is a criminal associate of the defendant.

The defendant's relationship with AL came to the attention of law enforcement when police officers responded to a citizen call for assistance at the Western Inn Motel in Lakewood, Washington. Officers contacted HK, a 17-year old female, who was in a motel room with two other females, including AL and an adult female, Shawntay Wilson.

1 In subsequent interviews of HK, officers learned that she was a runaway and that in
2 February, she had met defendant Christopher Lewis and AL who offered for HK to stay
3 with them. HK did so and was asked by the defendant to engage in prostitution with AL
4 to earn money. HK walked the “track” (high prostitution areas) in the Tacoma and
5 Lakewood areas with AL, but she was scared and unfamiliar with prostitution. AL
6 engaged in acts of prostitution, earning hundreds of dollars on a weekly basis. She
7 provided some of her earnings to HK for HK to give to the defendant so that the
8 defendant believed that HK was performing sex acts. While HK was with the defendant
9 and AL, she observed that the defendant was demanding of AL to earn money, and that
10 he intimidated AL by the way that he spoke to her and treated her. After staying with the
11 defendant and AL for a few weeks, the defendant told HK that she could remain with him
12 or go with another pimp. HK had met co-defendant Lashad Alexander, through
13 defendant Christopher Lewis, and HK decided to go with co-defendant Alexander.

14 On the night that the police rescued HK, co-defendant Alexander was with
15 defendant Christopher Lewis, associate Daymon Miller, and co-defendant Alexander’s
16 victim, AH. The police stopped them in a car in the parking lot of the Western Inn motel
17 after they tried to flee from the police. Law enforcement later learned that HK had been
18 with co-defendant Alexander for several days by that time.

19 Nearly one month later, AL was contacted by the police again, after an undercover
20 prostitution sting. AL told officers that defendant Lewis had been her pimp for several
21 months, and she provided her prostitution earnings to him. She explained that she had
22 been with another pimp prior to defendant Lewis. AL described her relationship with the
23 defendant as a boyfriend-girlfriend relationship. In subsequent interviews with AL, she
24 explained that she had wanted the defendant to stay with her, that she was at times scared
25 of him and was afraid that he would leave her if she did not continue to engage in
26 prostitution. AL also stated that she was trying to protect HK by giving her money from
27 AL’s prostitution activities, as HK appeared not to know anything about prostitution
28 when she began staying with them, and that HK was reluctant to participate. AL was

required to provide the defendant with all of her prostitution earnings, which amounted to approximately \$7,000 over the course of three months.

AL has been reunited with her family and is now living a stable life. AL has expressed a desire to look towards the future and to distance herself from the defendant in an effort to heal from the emotional and physical trauma she endured last year.

II. ADVISORY SENTENCING GUIDELINES

The government's advisory sentencing guidelines differs from the calculations proposed by the Probation Office and the defendant. The advisory guideline range should be 100 to 125 months with a Total Offense Level 24 and a Criminal History Level VI.

Base Offense Level, USSG 2H4.1(a)(1)	22
Specific Offense Characteristic, Period of Peonage USSG 2H4.1(a)(1)	+1
Victim Related Adjustment, Vulnerable Victim USSG 3A1.1(b)(1)	+2
Obstruction of Justice, USSG 3C1.1	+2
<u>Acceptance of Responsibility, USSG 3E1.1</u>	<u>-3</u>
<u>TOTAL OFFENSE LEVEL</u>	<u>24</u>

A. Probation's Sentencing Guideline Calculations

As noted in the PSR Sentencing Recommendation, the government provided written objections to the Probation Office with respect to their application of these Guideline Sections:

- (i) USSG Section 2H4.1(b)(4)(A), "other felony offense,"
- (ii) USSG Section 4B1.1(a), Career Offender, and,
- (iii) USSG Section 3E1.1, Acceptance of Responsibility.

Although the parties offer an agreed and binding sentencing recommendation, the government offers to the Court its analysis of the application of these Guideline Sections for the Court's benefit.

1 B. “Other Felony Offense”

2 The government disagrees with the Probation Office in applying the “other felony
3 offense” adjustment in Section 2H4.1(b)(4)(B) as to the related crime of sex trafficking of
4 a child. The government submits that, in this specific situation, to do so would result in
5 double counting. *See United States v. Speelman*, 431 F.3d 1226 (9th Cir. 2005); *United*
6 *States v. Calimlim*, 538 F.3d 706 (7th Cir. 2008). “The bar on double counting comes
7 into play only if the offense itself necessarily includes the same conduct as the
8 enhancement.” *Calimlim*, 538 F.3d at 716. This “[bar] is rooted in the fact that the
9 conduct that satisfied an element of the underlying offense is already part of the base
10 offense level. Thus, if that same conduct also enhances the sentence, the defendant is
11 being punished twice for the same act.”*Id.*, e.g., *United States v. Tenuto*, 593 F.3d 695,
12 697 (7th Cir. 2010). “Impermissible double counting ‘occurs where one part of the
13 Guidelines is applied to increase a defendant’s punishment on account of a kind of harm
14 that has already been fully accounted for by the application of another part of the
15 Guideline.” *Speelman*, 431 F.3d at 1233.

16 The elements of the crime of conviction, Human Trafficking, are closely aligned to
17 the crime of Sex Trafficking of a Child. Both crimes require 1) the recruiting, harboring,
18 transporting, providing, or obtaining of another person, 2) for labor or services, and 3) by
19 means of force, serious harm, or coercion (i.e. by means of a scheme, plan, or pattern
20 intended to cause the person to believe they would suffer serious harm). In *Calimlim*, the
21 defendants were convicted of forced labor and harboring an alien for financial gain. The
22 elements of the crimes of forced labor and harboring an alien for financial gain are
23 distinctly different, and neither involves the necessary commission of the other. Here,
24 there is substantial overlap in conduct for both offenses, and thus, the applicable guideline
25 to the offense of conviction is the appropriate guideline to use.

26 C. Career Offender

27 The defendant’s criminal history is extensive and serious. The government does
28 not believe that his criminal history score and level are overstated. However, strict

1 application of the Career Offender adjustment does not apply to defendant Lewis and the
 2 elements of the crime of conviction, Human Trafficking. Defendant Lewis satisfies two
 3 of the three requirements for the Career Offender adjustment: He is 18 years old, and his
 4 has two prior felony convictions. However, the instant offense of conviction is not a
 5 crime of violence. The elements of the offense of Human Trafficking, as charged in the
 6 Superseding Information and as stated in the Plea Agreement, are:

7 First, the defendant knowingly recruited, harbored, transported, provided, or
 8 obtained another person;

9 Second, the defendant did benefit financially from participation in a venture
 10 which has engaged in providing or obtaining labor or services by means of a scheme or
 11 plan to cause the other person to believe that if the person did not perform such labor or
 12 services, the person would suffer serious harm; and,

13 Third, the defendant knew or acted in reckless disregard that the providing
 14 or obtaining of labor or services was by the means described above.

15 Section 4B1.2 defines “crime of violence” as “any offense under federal . . . law
 16 punishable by imprisonment for a term exceeding one year, that -- (1) has as an element
 17 the use, attempted use, or threatened use of physical force against the person of another.”
 18 Although the use of physical force was involved, as reported by AL, it is not an element
 19 of the offense of conviction.

20 D. Acceptance of Responsibility

21 The Probation Office asserts that the defendant is ineligible to receive a downward
 22 adjustment for acceptance of responsibility due to the application of an upward
 23 adjustment for obstruction of justice. The facts supporting the obstruction of justice
 24 adjustment is contained in Paragraphs 20-23 of the PSR, and the government concurs
 25 with those facts.

26 Defendant Lewis has submitted a lengthy statement in an effort to demonstrate
 27 acceptance of responsibility. Despite the harsh manner in which he treated AL, the
 28 defendant acknowledges that he can now “see clearly how [his] actions affected the

1 young woman in this case . ." and that he sees "the pain that he caused [AL]", and
 2 "apologize[s] most whole-heartedly to [AL] and hopes she will find the peace inside
 3 herself one day to forgive [him]." The defendant's obstructive conduct occurred when he
 4 was in custody on related state charges, and he attempted to persuade AL to conceal
 5 herself from law enforcement and to refrain from cooperating. Upon the filing of the
 6 federal indictment against the defendant and his transfer of custody to the Federal
 7 Detention Center in August 2010, the defendant has not otherwise been involved in
 8 obstructive conduct nor has he made any direct or indirect efforts to persuade or
 9 discourage AL or any other witnesses from providing truthful information to law
 10 enforcement.

11 The government recognizes that application of Sections 3C1.1 and 3E1.1 do not
 12 *ordinarily* apply, yet the Court has the discretion to find reasons for the application of
 13 each section. Here, the Court may point to the timeliness of defendant's plea, his
 14 sentence agreement of nine years, and the lengthy acceptance of responsibility statement,
 15 as well as the fact that his obstructive behavior occurred prior to the federal indictment, as
 16 reasons warranting the application of both Sections 3C1.1 and 3E1.1.

17 III. GOVERNMENT'S SENTENCING RECOMMENDATION

18 The government exercised its prosecutorial discretion by allowing the defendant to
 19 plead guilty to the offense of Human Trafficking which does not impose a mandatory
 20 minimum term of imprisonment. The defendant faced either a ten-year or fifteen-year
 21 mandatory minimum term of imprisonment if he had been convicted as charged in the
 22 Second Superseding Indictment. He also would have faced a significantly higher
 23 guideline range. The parties participated in a settlement conference to achieve the terms
 24 reached in the Plea Agreement. We did so in an effort to reach an agreement that would
 25 ensure that the defendant acknowledged the severity of his conduct, recognized the
 26 negative impact that such conduct had upon AL, and to punish the defendant for a
 27 sufficient period of time so as to deter him from preying upon other young women in the
 28 future. By reaching the binding sentencing agreement, the government also considered

1 that potential impact that testifying in open court could have had on AL. Although AL
2 was cooperative and willing to testify, she was also ready to move on with her life and to
3 create a safe environment for herself so that she did not have to relive the experience of
4 being exploited and mistreated. As the government has experienced with other victims of
5 trafficking who have had to face their perpetrators in open court, it is an emotionally and
6 physically demanding process for victims. In its negotiations with defendant Lewis, the
7 government took into these factors, along with the need to seek an adequate and
8 appropriate sanction for the defendant.

9 As agreed, the government recommends a sentence of nine years of imprisonment.
10 The government agrees that the defendant is entitled to credit for time served while in
11 Pierce County custody, immediately preceding his transfer of custody to the Federal
12 Detention Center at SeaTac. The government further recommends a period of
13 supervision of three years to follow the term of imprisonment, along with the standard
14 and special conditions as suggested by the Probation Office. The defendant has agreed to
15 pay restitution in the amount of \$7,000.00 to AL, and the government agrees with this
16 amount. A mandatory assessment of \$100 is required.

17 The government analyzed the factors under Title 18, United States Code, Section
18 3553(e) in deciding that a sentence of nine years is a sentence that is sufficient but not
19 greater than necessary to meet the goals and purposes of sentencing.

20 Defendant Lewis has a lengthy criminal history which includes convictions for
21 assault and other similar crimes since he was a juvenile. These are the skills that he
22 learned as a teenage boy and young man with which to control women and to get what he
23 wanted. Defendant Lewis was able to take advantage of a teenage girl who was homeless
24 and looking for and needing emotional and physical acceptance. Unlike the defendant,
25 AL did not have a criminal history and although she had been engaging in prostitution
26 under the direction of another pimp, she did not have the history or the experience that
27 would have otherwise caused her to commit other crimes. Defendant Lewis was able to
28

1 manipulate his relationship with AL, and her desire for acceptance, to financially benefit
2 from it.

3 A sentence of nine years is in alignment with similarly situated defendants who
4 have been convicted of Human Trafficking in this District, and who preyed upon teenage
5 girls and young women to financially benefit from their prostitution activities.
6 Specifically, defendants Toda Robinson (CR09-129TSZ), Marquin Thompson (CR09-
7 122JCC), and Mark McGlover (CR06-393JLR) received sentences ranging from 6 to 8
8 years.

9 The government also agrees with the Probation Office that the defendant is highly
10 likely to re-offend upon release from imprisonment. Nine years of imprisonment is a
11 sentence that will ensure that the defendant refrain from committing crimes of violence
12 against teenage females and young women, to protect others from his conduct, and to
13 allow the defendant an opportunity in prison to acquire new skills and strategies for living
14 a crime-free life upon his release from prison.

15 IV. WAIVER OF APPEAL

16 Pursuant to the parties's Plea Agreement, the defendant has agreed to waive his
17 right to appeal the conviction and sentence if this Court imposes a sentence within the
18 agreed sentencing range. The government respectfully requests this Court to remind the
19 defendant, at sentencing, of his waiver of appeal.

20 DATED this 13th day of June, 2011.

21
22 Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby certify that on June 13, 2011, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the attorney(s) of record for the defendant(s). I hereby certify that I have served the attorney(s) of record for the defendant(s) that are non CM/ECF participants via telefax.

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